IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
(Chapter VIII Rule 32(2)(b)

Date of decision: 17.09.2007

Writ Petition No. 483 (S/S) of 2001
(Old No. 21326 of 1990)

ALONGWITH

Writ Petition No. 3998 (S/S) of 2001
(Old No. 3381 of 1991)

Approved for reporting

Not approved for reporting

Initial of Judge

Date: 17.09.2007

Note: Bench Reader will attach this at the top of first page of the Judgment when it is put up before the Judge for signature.

Judgment Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 483 (S/S) of 2001
(Old No. 21326 of 1990)

Chandra Mani Purohit
S/o Shri Pitambar Dutt Purohit
Head Master
Janta Junior High School
Vijay Garh, District Rudraprayag (U.A.)
….. Petitioner

Versus

1. Zila Basic Shiksha Adhikari
   District Rudraprayag (U.A.)
2. Committee of Management
   Janta Junior High School
   Vijay Garh, through its
   Manager, District Rudraprayag (U.A.)

…….Respondents.

ALONGWITH

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Shri B.K. Pal, Adocate for the petitioner.
Shri N.P. Sah, learned standing counsel for respondent No. 1.
Shri R.P. Nautiyal, Advocate, for respondent No. 2.

Hon’ble Prafulla C. Pant, J.

Both these writ petitions are connected with each other and are being taken up together for their disposal.

2. Heard learned counsel for the parties and perused the record.

3. Brief facts of the case are that petitioner Chandra Mani Purohit, was Assistant Teacher in institution, which was being run by respondent No. 2 with the name ‘Janta Junior High School’, Vijaygarh. According to the petitioner post of Headmaster in said school fell vacant in the year 1988. And an advertisement was made to fill the same in the year 1988. The petitioner possessed degrees-Bachelor of Arts and Bachelor of Education and as such qualified for the post of Head Master. The petitioner’s case is that five candidates appeared before Selection Committee and on the basis of report of said Committee, the petitioner was given appointment to the post of Headmaster on 18.10.1988. It is alleged that the appointment of the petitioner was approved by District Basic Education Officer (respondent No. 1) vide order dated 03.04.1989. It is further stated in the writ petition that before selection of petitioner as Head Master of the institution, his services were terminated in July, 1988, one Laxmi Prasad Thapliyal was the Head

Master. It is alleged that said Laxmi Prasad Thapliyal, filed writ petition No. 19012 of 1988, before Allahabad High Court (fate of which is not known). The petitioner has alleged that the petitioner was continuously working in the institution but the Manager of the school interfered with the working of the petitioner and did not submit the bill of salary of the petitioner to District Basic Education Officer, as a result of which the petitioner did not get salary since February 1990. Consequently, the petitioner filed writ petition No. 21326 of 1990 (now renumbered as 483 (S/S) of 2001). In said writ petition an interim order was passed on 21.08.1990, by Allahabad High Court, whereby it was directed that *in the meantime, if the petitioner discharges his duties on the post of Head Master, in Janta Junior High School, Vijay Garh……, he shall be paid his salary attached to said post. This would be without prejudice to the contention raised in the writ petition No. 19012 of 1988 (Laxmi Prasad Thapliyal Vs. Committee of Management and others).* When the petitioner approached the school to resume his duties, he was not allowed to work, rather respondent No. 2 – Committee of Management, got annoyed with the petitioner. The petitioner lodged First Information Reports and also made complaints to the Sub-Divisional Magistrate, Rudraprayag, regarding manhandling by the employees of the Committee of Management of the school. Respondent No. -1

District Basic Education Officer and the Collector of the District, directed the Committee of Management not to interfere in the working of the petitioner but respondent No. 2 did not pay any head. Instead vide order dated 01.01.1990, services of the petitioner were shown to have been terminated and the letter terminating the services of the petitioner got served on his home address on 13.09.1990. Hence, the subsequent writ petition No. 3381 of 1991 (now new No. 3998 (S/S) of 2001) was filed before Allahabad High Court, challenging the order of termination on the ground that it is violative of Rule 15 of U.P. Recognised Basic Schools (Junior High School) (Recruitment and Condition of Service of Teachers) Rules, 1978. It is also alleged in the subsequent writ petition that without the departmental enquiry, the services of the petitioner are terminated on the serious charges that he did not return the registers and record of the school and did not give account of the collection of subscription made by him. (Both these writ petitions are transferred to this Court, under Section 35 U.P. Reorganisation Act, 2000, for their disposal).

4. A counter affidavit is filed on behalf of respondent No. 2- Committee of Management in which it is stated that one Laxmi Prasad Thapliyal, was appointed as Head Master in Janta Junior High School on 06.07.1986. It is further stated that his appointment to the post of Head Master was

approved by District Education Officer (respondent No. 1). It is further stated that Shri Laxmi Prasad Thapliyal was confirmed as Head Master in the school. Thereafter, Committee of Management, terminated services of Laxmi Prasad Thapliyal and advertised the post of Principal. However, meanwhile, writ petition was filed in the year 1988 by said Laxmi Prasad Thapliyal, which was admitted by Allahabad High Court on 04.10.1988. As such the selection process of new Head Master got held up. It is alleged in the counter affidavit that the letter of appointment of the petitioner as Head Master and its approval, relied by the petitioner are forged one. It is also stated in the counter affidavit that Janta Junior High School, Vijay Garh, was not an institution under grant in aid of the State. It is further stated by the answering respondent that Committee of Management, cancelled the termination order of Laxmi Prasad Thapliyal on 07.11.1989. Consequently, he resumed his duties as Head Master. It is also stated in the counter affidavit that later under directions of Regional Assistant Director (Basic), during the pendency of these writ petitions, the institution was taken into grant in aid. In para-12 of the counter affidavit, it is stated that only for the period of absence of Laxmi Prasad Thapliyal (i.e. from the date of termination of his service till the date the termination order was withdrawn), the petitioner Chandra Mohan Purohit was allowed to work as Head Master. It is alleged in

the counter affidavit that the petitioner (Chandra Mani Purohit) did not return back the record of school and did not give the account of the receipts to the school.

5. In the rejoinder affidavit to the aforesaid counter affidavit, it was been stated by the petitioner that the impugned order of termination, passed by the petitioner is ante dated. Other contents of the writ petition are also reiterated in the rejoinder affidavit.

6. Learned counsel for the petitioner drew attention of this Court to the case of ***P. Vishwanatham Vs. Post Master General Andhra Pradesh 1983 (1) SLR Pg. 617, Kanhialal Vs. District Judge 1983 (1) SLR Pg. 621, Babulal Vs. State of Haryana (1991) 2 S.C.C. Pg. 335 and Prithvi Pal Singh Vs. State of Punjab 2007 (1) SLR Pg. 1***, wherein it has been held that the services of the temporarily appointed employee cannot be terminated with stigma, without affording opportunity of being heard.

7. All the aforesaid cases pertain to the Government servants/public servants. In the present case, Janta Junior High School, Vijay Garh, was admittedly a private school run by Committee of Management (respondent No. 2). As such, provision of Article 311 of Constitution of India, are not

attracted to the impugned order of termination. Though it is stated in the writ petition that the school was in the grant in aid of the State, but said fact has specifically been denied in the counter affidavit, filed on behalf of respondent No. 2. And it has been stated in reply to said fact that the school was taken on grant in aid of the State only during the pendency of these writ petitions. That being so, the organization in which the petitioner served and from where his services allegedly wrongly terminated was purely a private school and no writ can be issued to respondents in respect of the incident before such institution was taken in grant in aid. The remedy was open to the petitioner in the civil court where he could have instituted the suit.

8. Having gone through the papers on record this Court is satisfied that the petitioner was appointed as Head Master in the school (after services of Laxmi Prasad Thapliyal are terminated), and he also worked till Laxmi Prasad Thapliyal resumed his duties after order of termination is withdrawn by the Committee of Management. It is also evident from the annexures filed to the writ petitions that respondent No. 1 approved the appointment of the petitioner as Head Master during the period when Laxmi Prasad Thapliyal was kept out of job. However, for the reasons as mentioned in the preceding para that the institution was a private institution and not in grant in aid of the State at the time when the petitioner was

appointed as Head Master and thereafter when his services were terminated, this Court in its writ jurisdiction, cannot interfere in the matter.

9. For the reasons as discussed above, both the writ petition are liable to be dismissed. The same are dismissed. No order as to costs.

Dt. 17.09.2007 **(Prafulla C. Pant, J.)**
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